

March 24, 1997

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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DECISION ON APPEALS OF DETERMINATION OF
ENVIRONMENTAL NONSIGNIFICANCE (MITIGATED).

SUBJECT: Department of Development and Environmental
Services File No. **B94C0092**

RICHMOND BEACH LIBRARY
Appeal of Mitigated Determination
of Non-Significance

Property Located: On the north side of Richmond Beach Road,
west of Northwest 196th Street

Property Owner: King County
Department of Parks and Recreation
506 Second Avenue, Room 1621
Seattle, WA 98014

<u>Applicant:</u>	King County Library District 300 8th Avenue North Seattle, WA 98019	Represented by: Michael Pierson, Esq. 1001 Fourth Avenue Plaza, #4500 Seattle, WA 98154
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<u>Appellants:</u>	Glen D. Halverson, et al. Represented by: John Alkire, Esq. 1201 Third Avenue, 40th Floor Seattle, WA 98101	Robert Harris and Linda Olson 2028 Northwest 196th Place Shoreline, WA 98177
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Intervenor: People for a Library in the Park
Marge Griffin, President
19620 24th Avenue NW
Shoreline, WA 98177

SUMMARY OF RECOMMENDATIONS:

Division's Preliminary: Deny the Appeals
Division's Final: Deny the Appeals
Examiner: Grant the Appeals

PRELIMINARY MATTERS:

Notice of appeal received by Examiner:
Alkire Appellants November 21, 1996
Robert Harris and Linda Olson November 26, 1996
Statements of appeal received by Examiner:
Alkire Appellants November 21, 1996
Robert Harris and Linda Olson November 26, 1996
Amended Statement of Appeal received
by Examiner:
Alkire Appellants January 3, 1997

EXAMINER PROCEEDINGS:

Pre-hearing Conference: December 20, 1996 &
January 17, 1997
Motions:
· To Strike Attachments to Appeal December 20, 1996
· To Reconsider December 20, 1996
· For withdrawal of MDNS January 17, 1997
· For Partial Dismissal January 17, 1997
Hearing Opened: February 10, 1997
Hearing Closed: February 26, 199

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner. Due to the importance and scope of the issues presented, and to provide due process to all parties, the hearing Examiner has extended the deadline for completion of this appeal proceeding by 30 days as authorized by KCC 20.214.097.

ISSUES ADDRESSED:

- Environmental policy
 - Threshold determination
 - Standard of review
 - Comprehensive Plan policies
 - Precedent for future actions
- Libraries

- Parks
- Recreation
- Open space
- Scenic view protection
- Wildlife habitat
- Traffic
 - Safety
 - Congestion
- Parking
- Noise
- Retaining walls

EXAMINER'S OPINION:

The proposal which has given rise to this controversy is the development of a library and associated parking on approximately two thirds-acre of Richmond Beach Center Park, a local (neighborhood) park within the City of Shoreline. The project proponent is the King County Library District; the owner of the property is King County.

The controversy arises from the conflicting views held by two groups of community citizens whose priorities for use of this portion of the park site differ. One group sees the park location as ideal for a branch library to serve the community; the other group sees the proposal as an intrusion into valuable park and open space area in their urban neighborhood.

The views of the group supporting "a library in the park" have thus far prevailed with the County's political leadership. Motions adopted by the King County Council have provided legislative support for the proposal, and executive action has followed, consistent with the Council's request.

The principal King County decisions relevant to this proceeding, all necessary to turn the proposal into a reality, are:

1. "Surplusing." The declaration of the land in issue as surplus to the needs of King County;
2. Leasing. The leasing of the property by King County to the King County Library District; and
3. Construction Permit. Issuance by King County of a commercial building permit for construction of the library.

Decisions 1 and 2 were made in 1993. They were challenged in a judicial proceeding brought by two organizations and numerous individual citizens of the area. (King County Superior Court Case No. 93-2-07758-1.) Several grounds, including failure to conduct any environmental analysis pursuant to the State Environmental Policy Act (SEPA), were alleged as reasons for invalidating the surplus and leasing decisions.

The Superior Court held, and the Court of Appeals affirmed, that both the declaration of a portion of the Richmond Beach Center Park as surplus, and the lease of that portion of the park by King County to the Library District, were lawful. However, the court also held that King County had violated SEPA by failing to perform a threshold determination, and by failing to take such further action as the

threshold determination might require, regarding the execution of the lease.

To correct the violation of SEPA, the court ordered that King County not proceed with the lease or the building permit application until it completed a threshold determination for the lease. The order was clear that it did not invalidate the lease, the surplus decision, or any other action taken by King County or the Library District. Exhibit 3; Order Granting Summary Judgment, page 6, lines 24-25. The Court of Appeals specifically affirmed this aspect of the order issued by the Superior Court. Consequently, the considerable environmental analysis provided for the first time by the Department of Development and Environmental Services ("DDES") in the November 12, 1996, "Amended Environmental Checklist and Staff Recommendation," may have been developed, in part, to provide information for decisions which already had been made by King County and the King County Library District in 1993.

Although analysis of alternatives is not material to a SEPA threshold determination, both the Superior Court and the Court of Appeals were concerned that there be consideration of alternative sites for the branch library.

"Was there any consideration of alternative sites from an environmental standpoint? Would other potential locations for the library appear to have significantly less environmental impact than the park site? If so, does the permit review process assure that siting considerations will be reviewed or does the lease need to include a special provision to that effect? Defendants' argue that alternative sites 'may' or 'can' be reviewed during the SEPA review at the building application stage and counsel for the library states, with no supporting affidavits, that 'when the EIS is prepared, a rigorous analysis of alternative sites for the library will occur.' . . . The court could not find in the record what the County reviewed in regards to alternative sites and the relative environmental impact of siting a project such as this at those sites. The Court is not satisfied that the normal permit application process adequately preserves any site selection issue for the County." Exhibit 5; King County Superior Court Decision on Motions for Reconsideration, March 3, 1993 (*sic*) 1995, unnumbered pages 5 - 6, lines 27 - 9. Incorporated by reference in Exhibit 3; Order Granting Motions for Summary Judgment, April 11, 1995, page 5, line 5.

* * *

"The trial court struck an appropriate balance between requiring the County to repeat all the actions it had already taken and insuring that alternative sites and other SEPA concerns were addressed at the time mandated by the act. . . ." Exhibit 2; State of Washington Court of Appeals, Division I, unpublished opinion, filed September 30, 1996, page 21.

(The Examiner notes that the Court of Appeals would only require consideration of alternative sites "at the time mandated by the act". This would be at the time an EIS is prepared, if one were required. However, the ultimate action by the Court of Appeals was to affirm the Superior Court decision. That decision clearly anticipates that alternative sites for the branch library would be considered through the SEPA review process.)

The Examiner's specific jurisdiction is to determine whether the 1996 analysis is sufficient to support the threshold determination of environmental nonsignificance (mitigated), issued by DDES on November 12, 1996. Because the November 12, 1996, MDNS is the only decision on review in this proceeding, the Examiner has consistently ruled that analysis of alternative sites is not material. Such

analysis is not a required element of a threshold determination, and it is not the Examiner's province to decide the appropriateness of this or other sites. The Appellants' interest in compelling analysis of alternative sites may be enforced, as the Examiner has previously stated, by the Court as the law of the case if a proper request is presented to Judge Learned and she deems it appropriate to require such analysis.

The action which DDES analyzed in the threshold determination under review was the leasing of the site in question, together with issuance of permits for construction of the branch library and associated parking. The responsible official and counsel for the Library District both correctly understood that the decision to surplus the land, although prior in time and left in effect by the Court, was inextricably intertwined with the decision to lease. Therefore, the surplus action cannot be utilized as a "given," in order to restrict the analysis of the impacts on park and open space area which will result from the proposal.

The intervenors presented evidence that this library proposal was already under consideration prior to 1990. A large building, removed that year from the center of the site, had been a school gymnasium prior to acquisition of the property by King County in 1977 for use as a park. From 1977 to 1988, when it was closed by King County as unsafe, the gymnasium building had been operated by the Richmond Beach Community Council as a community center. It is argued that the environmental impacts of a proposal to remove a large building and parking area from the center of the park property, replacing them with the library and parking area at the southeast corner, has less impact than a proposal to build within the now unobstructed park. But the actual condition of the park in 1993 and today is unobstructed. I have been cited to no authority which would support evaluating the 1993 proposal in the light of park conditions as they existed prior to 1990. Consequently, my decision is premised on this proposal being a development within the park as it is described in Finding No. 7, below.

The issues of environmental impact which the Examiner has considered in reviewing the evidence are those listed in Finding No. 5, below. Of overriding importance, in my view, is the present, and possible future, reduction of public park and open space area here and in other similar areas in King County. A preponderance of the evidence establishes five significant impacts which will result from the proposed development. In ascending order of importance, these impacts are on neighborhood aesthetics and views; conflict with Comprehensive Plan Policies addressing open space and recreation; the establishment of a precedent for use of park area; reduction of urban recreation area; and reduction of urban open space.

At the hearing, the only witness on behalf of the King County Parks Division testified that construction of the library on the subject property would not constitute a significant adverse impact upon the uses he had observed on his four visits to the site. He also testified that the proposed library would result in additional amenities at the location, thereby enhancing the park. For those reasons, and because of the already large deficit of park acreage serving the area, it was his opinion that removal of this 2/3 of an acre from Richmond Beach Center Park would not have significant adverse impact.

On the other hand, his testimony reflected an understanding that the decision to surplus "had already been made by a higher authority". This witness recognized the expansive views of Puget Sound and the mountains to the west provided by this park. He candidly acknowledged the responsibility of the Parks Division to perform the function of preserving or providing open space and recreational opportunities. He stated that he uses precedents to guide his future actions, and admitted being troubled by the precedent set by the proposal.

This witness is a 12-year employee of the Parks Division. As Capital Improvement Program Coordinator, he makes recommendations on improvements and acquisitions of park property. He was designated by the Division as the person responsible for commenting on this proposal. His testimony was candid and reflected reasonable, albeit limited, knowledge of relevant facts and information relevant to the proposal. But for the influence he acknowledged as a result of the decision already having been made by higher authority, his analysis and conclusions would be entitled to substantial weight.

The photographs of this neighborhood park; the descriptions of its use and enjoyment by numerous residents of the area; and the opinion as to the park's value held by the Parks Division Director at the time she first considered the transfer in 1992, are far more convincing. See Exhibits 20-85, 89, 144A, 144C, 145 and 146. The evidence and argument that the park (particularly the area in issue) is little utilized, and that the Parks Division Director changed her mind, or (more probably) was over-ruled, are substantially outweighed by the evidence of open area, aesthetic beauty, frequent active use, and the professional opinion of the former director indicating the importance of maintaining the park area.

WAC 197-11-330 governs the threshold determination process. The responsible official is required to take into account, among other factors, that:

"Several marginal impacts when considered together may result in a significant adverse impact; . . .

"A proposal may to a significant degree: . . . adversely affect environmentally sensitive or special areas, such as . . . parks . . . ; and establish a precedent for future actions with significant effects"

WAC 197-11-330(3)(c)(e)(i)(iv).

"The same proposal may have a significant adverse impact in one location but not in another location;

WAC 197-11-330(3)(a).

The analysis documented and described in the threshold determination was done item by item. There is no indication that the responsible official considered the totality of impacts of the proposal on this park, a "special place" in an urban neighborhood.

The likelihood that this action would become a precedent for future use of park land for libraries or other public facilities does not appear to have been considered at all in the threshold determination. Likewise, no consideration appears to have been given to the impact of the proposal on the parks, recreation and open space policies of the King County Comprehensive Plan.

In the Examiner's opinion, the impacts upon recreation area, open space, aesthetics (views), the application of King County Comprehensive Plan policies governing recreation and open space, and the establishment of a precedent for future County actions utilizing park land, all affecting public park land in a built-up urban area, each constitute more than a moderate impact upon the environment. When these impacts are considered together, the conclusion that the proposed action will have a probable significant adverse impact upon the environment is virtually inescapable.

The impacts upon vegetation and wildlife habitat which could result from the proposed development

also was the subject of extensive testimony and documentary evidence presented by the Appellants. After giving careful consideration to that evidence, I am persuaded these impacts are minor. There is no question but that habitat will be lost, with resulting diminution (if not total elimination) of two-thirds of an acre for use by birds and other wildlife. However, the area in issue provides no special habitat; there are no nesting or perching trees which will be removed; and the library will create no more disturbance than does park use for wildlife in the vicinity, once construction is completed. Substantial areas of equivalent or better habitat will remain nearby. Furthermore, the site is located within an urban area, where displacement of wildlife is not generally considered to be a significant adverse impact.

Some additional traffic is likely to result as a consequence of library development. However, the evidence indicates that the additional traffic attracted to the site is well within the capacity of the local access streets, as well as the arterial, which serve the area. No evidence of likely congestion or special safety impacts associated with the increased traffic was presented. The traffic impact from the proposal is likely to be minor.

There is a reasonable possibility that some impact on the retaining wall which protects the existing park may result from the proposed construction. The preponderance of the evidence is that there has been some slow movement at the joints of the wall during recent years, probably resulting from increased loads on the soil adjacent to the wall. Since there is no evidence of increased hydrostatic pressure, the increased loads causing movement are probably from parking which occurs adjacent to the wall on 21st Avenue Northwest.

The area proposed for library and parking lot construction will result in replacement of the retaining wall along Richmond Beach Road, and will directly affect a low portion of the wall along 21st Northwest. The higher portion of the wall, extending north from the project site, could be affected by additional loading resulting from parking of construction vehicles and stockpiling of materials. (See Exhibit 104.) A failure of the retaining wall along the east boundary of the park is likely to be a slowly occurring event, which would be a minor to moderate impact, depending upon the location and extent of the failure. Failure of the retaining wall is not a probable significant adverse impact of the proposal.

Three alleged areas of adverse environmental impact were supported by virtually no persuasive evidence. Conflict of use between the library and park; noise; and additional neighborhood parking are unlikely. To the contrary, The preponderance of evidence is that the library and park would likely be symbiotic uses. Noise and overflow parking are more likely to continue from use of the area in question for park purposes, rather than use as a library, which would provide 21 additional on-site parking spaces available to both library and park users.

This matter will be remanded to the responsible official for the preparation of an environmental impact statement. The lead agency will establish the scope of the environmental impact statement, so as to provide analysis of only those areas of impact which it considers significant. The preparation and consideration of an environmental impact statement for this proposal is likely to produce community benefit which will far outweigh the cost. It will afford the opportunity to consider alternative sites for the proposed library, rendering unnecessary another judicial proceeding to determine whether alternative site analysis is required, and there will be opportunity to solicit comments on the proposal from the City of Shoreline.

Although not a basis for this decision, I was concerned that not even the presently available environmental information (provided by DDES in the 1996 Amended Environmental Checklist and

staff recommendation) was considered when the decisions to surplus and lease the subject property were made in 1993. Failure to integrate the only substantial environmental analysis of this proposal into the early critical steps of the decision-making process would constitute a failure to ". . . [E]nsure that presently unquantified environmental amenities and values will be given appropriate consideration in decision-making along with economic and technical considerations;. . . ." RCW 43.21C.030(b).

To assure integration of the environmental analysis into the decision-making process and comply with the letter and spirit of the mandate of the Court, the final environmental impact statement should be provided to the officials of King County and the King County Library District who would be responsible for making current decisions to surplus, lease, and acquire property for a Richmond Beach branch library, to enable the 1993 decisions to be reconsidered in the light of adequate environmental analysis. One would hope that through this process the affected citizens, whatever the outcome, will be better satisfied that their concerns and interests have been appropriately considered in accordance with the laws of the State and the policies of King County, bringing this protracted dispute to a conclusion.

FINDINGS:

1. The facts set forth in the preceding opinion are incorporated in these findings as if fully set forth.
2. The proposal in issue is the construction of a library and associated parking on 0.68 acre of an existing King County park within the City of Shoreline. The specific actions which are the subject of environmental review are: (1) the leasing of the subject property by King County to the King County Library District; and (2) issuance by King County of a commercial building permit authorizing the construction.

The current status of the proposal is:

- (1) A decision to surplus the portion of park property to be developed was made by the Director of the King County Department of Executive Administration. That decision was challenged in King County Superior Court Cause No. 93-2-07758-1. The law of the case is that the decision to surplus the land did not, itself, require an environmental threshold determination. That decision remains in effect, although its status is rendered uncertain by the judicial determination.¹

¹ In its initial decision and order on the summary judgment motions, the Superior Court held that King County violated SEPA because King County was required to undertake SEPA review of the surplus decision at the leasing stage of this project.

"King County was required to complete the SEPA process prior to making the decision to surplus the property. . . A threshold determination is required before alternative locations for the library are properly eliminated". Decision and Order on Summary Judgment Motion, pages 8-9 (Exhibit 4, underlining added).

Upon reconsideration, the Court said, "The court adheres to its previous discussion of the decision to surplus", and it added:

"This court holds that a threshold determination was required prior to the decision to lease a portion of the park to the Library District. It is clear from the undisputed facts in this case that the decision to surplus and lease this portion of the park went hand in hand, and that decision was for the express purpose of enabling the Library to build a library. The court may not have been previously clear, however, that it was the specific decision to lease that invokes the threshold determination requirement under the analysis in II B above". Decision on Motions for Reconsideration, page 4, (Exhibit 5, underlining added).

- (2) The property has been leased by King County to the Library District for a 35-year term. The validity of that lease was challenged in the same judicial proceeding. It was determined by the Court that King County violated the State Environmental Policy Act ("SEPA") by failing to perform a threshold determination, and such further action that the threshold determination might require, regarding the execution of the lease.²
3. The Superior Court and Appellate Court which adjudicated this proceeding were both concerned with "[E]nsuring that alternative sites and other SEPA concerns were addressed at the time mandated by the Act". The Court also was clear in stating that it did not intend to pre-determine the result of the threshold determination. (Exhibit 2, page 21). However, in the absence of an environmental impact statement and reconsideration of the lease, there is no decision point remaining at which consideration of alternative sites for the proposed library is required or likely.
4. In response to the judicial determination that SEPA had been violated, and following a remand by the Hearing Examiner to the responsible official, the Department of Development and Environmental Services ("DDES") issued an Amended Environmental Checklist and staff recommendation for the proposed development on November 12, 1996. The project is described as ". . . A library in the southeast corner of Richmond Beach Center Park; phases include a surplus and lease of approximately 2/3-acre of the 3.89-acre park and the permitting/construction of a one-story, 5,250 square foot library building, access drive, and 21 parking spaces (Exhibit No. 8). Concurrently therewith, the Department withdrew its prior threshold determination and re-issued a new determination of nonsignificance (mitigated) for the project (Exhibit No. 7).
5. Timely appeals of the MDNS were filed by Perkins, Coie (John Alkire), on behalf of 64 listed persons (referred to as the "Alkire Appellants"), and by Robert W. Harris and Linda Olson. Following a series of pre-hearing motions and orders, the following subjects of alleged environmental impacts were determined to be reviewable in this proceeding:
 - Recreation
 - Open space

The Court's final Order Granting Motions for Summary Judgment (Exhibit 3), entered on April 11, 1995, incorporated the Decision and Order dated January 23, 1995, and the Decision on Motions for Reconsideration dated March 3, 1995 (Exhibits Nos. 4 and 5, respectively), as setting forth the Court's reasoning on these claims.

² ". . . The County shall not proceed with the lease or the building permit application until it has completed a threshold determination under SEPA as to the lease. This order does not invalidate the lease, the surplus decision or any other action taken (*sic*) King County or the Library District." Exhibit No. 3; Order Granting Motion for Summary Judgment, page 6.

On appeal, the decision of the Superior Court was affirmed in all respects. The Appellate Court stated,

"There is also no reason why the leasing decision must be set aside. As the County notes, none of the activity that has occurred so far in connection with the library project could have had an adverse environmental impact. The possibility that the leasing decision might need to be set aside pending the result of the threshold determination remains open. . . ." Court of Appeals, Division One, unpublished opinion filed September 30, 1996. (Exhibit No. 2)

- Traffic, including safety, parking and congestion
- Conflict with Comprehensive Plan policies
- Establishment of a precedent for use of park land
- Noise
- Conflict of land use
- Aesthetics and views
- On vegetation and wildlife
- Light and glare
- Stability of existing retaining wall
- Public safety

At the opening of the hearing, the issue concerning light and glare was withdrawn from consideration by the Appellants.

6. The Hearing Examiner's authority in this matter is to grant or deny the appeal, or grant the appeal "with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21.C RCW (SEPA), and the regulations, policies, objectives and goals of the Comprehensive Plan, the Community Plan, subarea or neighborhood plans, the Zoning Code, the Subdivision Code and other official laws, policies and objectives of King County." KCC 20.24.080; Ordinance 12196, Section 26B. As an official of King County the Examiner is also required to comply with the mandate of the court issued in the proceedings described above.

In deciding this appeal, the Examiner must accord substantial weight to the threshold determination made by the responsible official. "Substantial weight" is provided by using the "clearly erroneous" standard of review. Under that standard, the responsible official's determination must be affirmed unless, based upon the facts of the case and the purposes and policies of the State Environmental Policy Act, implementing regulations and applicable County ordinances, the Examiner is left with the definite and firm conviction that a mistake was made.

7. Richmond Beach Center Park is a 3.89 acre neighborhood park within a developed urban area. It is bordered on three sides by single family residences. Richmond Beach Road, a four lane arterial, is adjacent to the south boundary of the park.

The park is a former school site. The last building remaining from the time of school use, a gymnasium, was converted to a community center in 1977 and was razed in 1990. Since that time the park has been an open area, characterized by grassy meadow, gently rolling topography in some areas, and steep slopes with relatively mature trees along the westerly portion of the south

boundary and the west boundary. The park has limited improvements, including play equipment, paths, benches and picnic tables, typical for a local park intended for use by the nearby community. It is maintained primarily as open area, suitable for play and relaxation by people of all ages. Expansive and pleasing views of Puget Sound, the Olympic Mountains, vegetation, and "openness" exist from almost anywhere within the park. Views of the park are available to residents along the east and north park boundaries.

Use of the park since 1990 changes from season to season and ranges from light to crowded. Various recreational uses occur throughout the entire area of the park. There is presently substantial freedom of choice by park users as to where and how they enjoy activities within the park. Richmond Beach Center Park is a significant amenity, providing recreation and open space which benefits primarily the residents of the community within which it is located.

8. The branch library and parking proposed to be constructed within the park would occupy approximately one-fourth of the usable park area. The remaining area could still function as a neighborhood park, but would do so with less open space, diminished views, and occasional crowding or conflict of activities within the park. Exhibit No. 129 shows clearly the diminution of open park area which would result from the proposal. This reduction in recreation, open space and views in an urban area constitutes more than a moderate adverse impact upon the environment.
9. The testimony provided on behalf of the King County Parks Division indicate that actions taken by King County with respect to County parks are considered as precedents for future actions where relevant. Evidence was presented of other instances where park land has been utilized for non-park, including library, purposes. Although the legality of some of those uses was questioned, the Parks Division did consider those precedents when its "final" recommendation to surplus and lease the subject property was made. It is very clear that a decision to surplus and lease the subject property for non-park uses would constitute an important precedent, likely to be relied upon in future decision-making, for conversion of other park land to similar worthy public purposes in the future. This would have more than a moderate adverse impact upon the environment, which was not considered in the threshold determination.
10. The chapter of the King County Comprehensive Plan concerning parks, recreation and open space begins by a reference to Goal 9 of the State of Washington Growth Management Act, to encourage the retention of open space and recreational areas. The Comprehensive Plan states:

"King County's wide range of park, recreation and open space opportunities contribute to its highly regarded quality of life. We value its elements of environmental quality, scenic beauty and social and recreational opportunities. These are important components of the physical, mental and emotional well-being of County residents and are important to the economic health of the region." 1994 King County Comprehensive Plan, page 189.

Plan policies which relate directly to local parks are policies PR-104 and PR-105. They state:

"Local parks, trails and open spaces should be provided in each community, in both urban and rural areas, to enhance environmental and visual quality and meet local recreation needs. Local means smaller sites and facilities to serve close-to-home, day-to-day needs of the community."

"A variety of measures should be used to preserve regional and local parks, trails and open space. King County will rely on incentives, regulations, trades or purchase of lands or easements."

The commentary which follows recognizes the challenges associated with accomplishing those policies, necessitating a wide variety of methods to acquire and retain parks and open space, including providing incentives to private property owners. The relinquishment of County owned park and open space land for development with other uses, no matter how meritorious those other uses may be, is the antithesis of these plan policies. The violation of Policies of PR 104 and PR 105, together with the proposal to take an action contrary to Goal 9 of the Growth Management Act and the intent of the Comprehensive Plan, is a greater than moderate adverse environmental impact, which was not considered in the threshold determination.

11. The impacts of the proposed development on vegetation and wildlife habitat, the stability of retaining walls bordering the park, traffic safety and congestion, parking, public safety and noise, to the extent such impacts may occur from the proposed action, are likely to be minor.
12. Unless the decision to surplus the property in issue, or the lease from King County to the Library District, are rescinded or reconsidered, there is no necessity for the public officials responsible for making those decisions to review any of the 1996 or subsequent environmental analysis undertaken for this proposal. The only decisions remaining to be made are those which relate to issuance of the building permit, which are site specific, ministerial decisions to be made within DDES. If the threshold determination of environmental nonsignificance stands, and there is no further judicial action, there will be no review of alternative sites nor integration of the required environmental review into the making of the critical policy decisions which related to this project.

CONCLUSIONS:

1. The conclusions set forth in the preceding opinion are incorporated herein as if fully set forth.
2. The proposed action will have probable significant adverse impact upon the environment by reducing recreation area, open space, and views within a public park in an urban area of King County.
3. The environmental threshold determination of nonsignificance (mitigated) issued on November 12, 1996, did not adequately consider the combined effect of the proposal's adverse impacts upon recreation, open space, and aesthetics (views) associated with the elimination of neighborhood park land within an urban area.
4. The analysis supporting the threshold determination failed to consider the adverse impact upon the environment likely to result from the use of this action as a precedent for future County actions which may, as a result of this proposal, convert additional park land to other meritorious public facilities or purposes.
5. The threshold determination failed to address the direct conflict of the proposed action with pertinent purposes and policies of the Growth Management Act and the King County Comprehensive Plan.
6. A threshold determination of environmental significance or nonsignificance must be made without

regard to the benefits of the proposed action and the public interest it may serve. It is the purpose and policy of the State Environmental Policy Act and the King County Environmental Policy Ordinance to require full disclosure of the impacts upon the environment of any major action which will have a probable significant adverse environmental impact. This requires consideration of reasonable measures to mitigate probable adverse impacts, including alternatives to the proposed action, which could accomplish the goals and objectives of the proposal with less environmental impact.

7. Giving full consideration to all of the evidence in the record and the purposes and policies of the State Environmental Policy Act, Growth Management Act, King County Environmental Policy Ordinance and KCC 20.24.080.B, I am left with the definite and firm conviction that the issuance of the determination of nonsignificance on November 12, 1996, was a mistake. The proposed action requires the preparation of an environmental impact statement which fully discloses probable significant adverse impacts upon the environment, reasonable mitigating measures, and considers alternatives which could accomplish the goals of the proposal with less impact upon the environment.
8. This decision requiring an environmental impact statement establishes no inference as to what the ultimate decisions on the proposed action should be.
9. This decision, in order to be consistent with the mandate of the King County Superior Court in Case No. 93-2-77758-1, must result in the reconsideration of King County's prior actions to surplus and lease the subject property. Such reconsideration must be undertaken with the benefit of the environmental analysis to be provided in an environmental impact statement for the proposed action.
10. Determination of the scope of the EIS for this proposed action is the responsibility of the lead agency.
11. The agencies with jurisdiction for this proposal have the continuing rights and opportunities for determination of the most appropriate lead agency, including possible division of lead agency duties, contained in WAC 197-11-922 *et seq.*

DECISION:

The appeals of the November 12, 1996, mitigated determination of nonsignificance are GRANTED and this matter is remanded for the preparation of an environmental impact statement by the appropriate agency or agencies, and for reconsideration of the prior decisions to surplus and lease the subject property, prior to any further action on the proposal by King County.

ORDERED this 24th day of March, 1997.

James N. O'Connor
King County Hearing Examiner

TRANSMITTED this 24th day of March, 1997, to the following parties and interested person:

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Richmond Beach Library (SEPA) - B94C0092

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Laurie Hanley

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19716 Ashworth Avenue North
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Sharon Claussen, Parks
Luanne Coachman, DDES/LUSD, SEPA Section
Marilyn Cox, DDES/LUSD, SEPA Section
Linda Dougherty, Manager, Parks Division
Ellen Turner, DDES/LUSD, SEPA Section
Angelica Velasquez, DDES/LUSD, SEPA Section
Mike Wilkins, Manager, Property Services Division
Barbara Heavey, DDES/LUSD, SEPA Section
Mark Sollitto, Parks and Cultural Resources
Tom Beavers, Natural Resources, Open Space
Paulette Norman, KC DOT, Roads Services Division

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding SEPA appeals.

MINUTES OF THE FEBRUARY 10 - 12, AND 24-26, 1997 PUBLIC HEARING ON DDES FILE NO. B94C0092 - RICHMOND BEACH LIBRARY SEPA APPEAL.

James N. O'Connor was the Hearing Examiner in this matter. Participating at the hearing were Luanne Coachman, Barbara Heavey, Paulette Norman, Mark Sollitto, Bill Ptacek, and Tom Beavers, representing the County; Jack Alkire, Michael Pierson, Robert Harris, Bill Griffin, James McBride, Sherry Hill, Bob Robertson, Garry Horvitz, Grace Tomlinson, Mary Del Re, Deb Richings, Charles Gioiosa, Ann Schulz, Karan Hough, Kay Johnson, Ray Johnston, Mike Myers, Bob Ediger, Laura Hill and Kathi Peterson.

The following exhibits were submitted December 20, 1996:

- | | |
|---------------|---|
| Exhibit No. 1 | Decision dated May 28, 1996, by James N. O'Connor, Hearing Examiner, regarding Motion to Invalidate Threshold Determination (File No. B94C0092) |
| Exhibit No. 2 | Excerpt from Court of Appeals decision (Case No. 36596-7); on 1/17/97 superseded by copy of entire decision |
| Exhibit No. 3 | Order Granting Motion for Summary Judgment (Cause No. 93-2-07758-1), executed April 11, 1995 |
| Exhibit No. 4 | Decision and Order on Summary Judgment Motion (Cause No. 93-2-07758-1), executed January 20, 1995 |

Exhibit No. 5 Decision on Motions for Reconsideration (Cause No. 93-2-07758-1), executed
March 3, 1993

The following exhibits were offered and entered December 23, 1996:

Exhibit No. 6 Letter from Luanne Coachman, DDES, to Examiner, dated December 19, 1996

The following exhibits were offered and entered December 23, 1996:

Exhibit No. 7 Withdrawal of Threshold Determination and Reissuance of Determination of
Nonsignificance (Mitigated) - Date of Issuance: November 12, 1996
Exhibit No. 8 Amended Environmental Checklist - Date of Issuance: November 12, 1996
Exhibit No. 9 Site plan of park showing library and parking lot
Exhibit No. 10 Architectural plan drawings of library and parking lot

The following exhibits were offered and entered February 10, 1997:

Exhibit No. 11 Department of Development and Environmental Services, Land Use Services
Division, Report to the Hearing Examiner
Exhibit No. 12 Environmental Checklist Form prepared May 25, 1994, with notations by LC
Exhibit No. 13 Appeal from Robert Harris and Linda Olson, dated November 26, 1996
Exhibit No. 14 Appeal from John D. Alkire, dated November 21, 1996, without attachments
(attachment stricken per December 19, 1996, Order)
Exhibit No. 15 Richmond Beach Library: Appeal of Threshold Determination (DDES File No.
B94C0092)-Amended Statement of Appeal, dated December 24, 1996, without
attachments (attachments not considered part of statement of appeal per January
23, 1996, Order)
Exhibit No. 16 Richmond Beach Library: Appeal of Threshold Determination (DDES File No.
B94C0092)-Amended Statement of Appeal, dated January 10, 1997, without
attachments (appeal and attachment stricken per January 23, 1996, Order)
Exhibit No. 17 SEPA file (submitted at hearing)
Exhibit No. 18
A&B Wildlife survey submitted by Harris
Exhibit No. 19 Patricia Thompson letter
Exhibit No. 20 Sworn statement dated February 9, 1997, of Sheri Ashleman
Exhibit No. 21 Sworn statement dated February 8, 1997, of Joyce Ask
Exhibit No. 22 Sworn statement dated February 8, 1997, of Justin and Shannon Bedford
Exhibit No. 23 Sworn statement dated February 9, 1997, of Pamela S. Brown
Exhibit No. 24 Sworn statement dated February 8, 1997, of Bert Brumett
Exhibit No. 25 Sworn statement dated February 10, 1997, of Stephanie L. Calderwood
Exhibit No. 26 Sworn statement dated February 9, 1997, of Michael J. Chamberlin
Exhibit No. 27 Sworn statement dated February 9, 1997, of Leslie C. Dana
Exhibit No. 28 Sworn statement dated February 8, 1997, of Norman R. Davis
Exhibit No. 29 Sworn statement dated February 9, 1997, of Yvonne and Robert Ediger
Exhibit No. 30 Sworn statement dated February 9, 1997, of Maryellen Fifer
Exhibit No. 31 Sworn statement dated February 8, 1997, of LaVerne K. Green-Gutersohn

Exhibit No. 32 Sworn statement dated February 8, 1997, of Kathleen Gregorich
Exhibit No. 33 Sworn statement dated February 8, 1997, of Vicki Gruger
Exhibit No. 34 Sworn statement dated February 8, 1997, of John P. Gutersohn
Exhibit No. 35 Sworn statement dated February 9, 1997, of Glen David Halverson
Exhibit No. 36 Sworn statement dated February 8, 1997, of Sanna Hammons
Exhibit No. 37 Sworn statement dated February 9, 1997, of Don and Arlene Hanson
Exhibit No. 38 Sworn statement dated February 8, 1997, of Janis Harsila
Exhibit No. 39 Sworn statement dated February 8, 1997, of Scott Harsila
Exhibit No. 40 Sworn statement dated February 9, 1997, of Daniel D. Hartman and Martha E. Hartman

Exhibit No. 41 Sworn statement dated February 9, 1997, of Jeffrey D. Hill
Exhibit No. 42 Sworn statement dated February 8, 1997, of Laura L. Hill
Exhibit No. 43 Sworn statement dated February 10, 1997, of Sherry Hill
Exhibit No. 44 Sworn statement dated February 10, 1997, of James R. Irwin
Exhibit No. 45 Sworn statement dated February 10, 1997, of Ron and Maile Johnson
Exhibit No. 46 Sworn statement dated February 9, 1997, of Barbara Jones
Exhibit No. 47 Sworn statement dated February 9, 1997, of Patricia Kemmish
Exhibit No. 48 Sworn statement dated February 9, 1997, of Kenneth C. Kyte
Exhibit No. 49 Sworn statement dated February 9, 1997, of Roxane Kyte
Exhibit No. 50 Sworn statement dated February 8, 1997, of Ann E. Maxwell
Exhibit No. 51 Sworn statement dated February 9, 1997, of Ellen McCall
Exhibit No. 52 Sworn statement dated February 9, 1997, of Gregory Kent McCall
Exhibit No. 53 Sworn statement dated February 10, 1997, of Lawrence C. Moore
Exhibit No. 54 Sworn statement dated February 9, 1997, of Teresa K. Nelson
Exhibit No. 55 Sworn statement dated February 9, 1997, of Janice E. Nesse
Exhibit No. 56 Sworn statement dated February 8, 1997, of Beth A. O'Neill
Exhibit No. 57 Sworn statement dated February 8, 1997, of Douglas O'Neill
Exhibit No. 58 Sworn statement dated February 8, 1997, of John H. Orozco
Exhibit No. 59 Sworn statement dated February 8, 1997, of Maria Patrizzi
Exhibit No. 60 Sworn statement dated February 9, 1997, of Maria Patrizzi
Exhibit No. 61 Sworn statement dated February 9, 1997, of Kathi Peterson
Exhibit No. 62 Sworn statement dated February 11, 1997, of Ken K. Pierson
Exhibit No. 63 Sworn statement dated February 9, 1997, of Peggy M. Prewett
Exhibit No. 64 Sworn statement dated February 9, 1997, of Mary Ann Quinlan
Exhibit No. 65 Sworn statement dated February 9, 1997, of Paul Reni
Exhibit No. 66 Sworn statement dated February 8, 1997, of Stephen W. Robinson
Exhibit No. 67 Sworn statement dated February 9, 1997, of Ginny Scantlebury
Exhibit No. 68 Sworn statement dated February 9, 1997, of Roy H. Scantlebury
Exhibit No. 69 Sworn statement dated February 9, 1997, of John Schalka
Exhibit No. 70 Sworn statement dated February 7, 1997, of Annetha Schmitt
Exhibit No. 71 Sworn statement dated February 8, 1997, of Reinhold A. Schmitt
Exhibit No. 72 Sworn statement dated February 7, 1997, of Cherie Singer
Exhibit No. 73 Sworn statement dated February 8, 1997, of Ellen H. Smith
Exhibit No. 74 Sworn statement dated February 9, 1997, of Richard and Valerie Speed
Exhibit No. 75 Sworn statement dated February 9, 1997, of Mrs. Samuel A. Steinmann
Exhibit No. 76 Sworn statement dated February 9, 1997, of Ronald E. Stickney
Exhibit No. 77 Sworn statement dated February 9, 1997, of Mary Ann Sullivan
Exhibit No. 78 Sworn statement dated February 9, 1997, of John Todd and Sydney Todd
Exhibit No. 79 Sworn statement dated February 9, 1997, of Marjorie G. Unruh

Exhibit No. 80	Sworn statement dated February 8, 1997, of Michael A. Valiente
Exhibit No. 81	Sworn statement dated February 8, 1997, of Mike and Sandy Verbrugge
Exhibit No. 82	Sworn statement dated February 8, 1997, of Brian Wartman
Exhibit No. 83	Sworn statement dated February 9, 1997, of Sharon Wartman
Exhibit No. 84	Sworn statement dated February 9, 1997, of Clyde J. Wilson
Exhibit No. 85	Sworn statement dated February 9, 1997, Melanie Young

The following exhibits were offered and entered into the hearing record February 11, 1997:

Exhibit No. 86	Topographic map used to illustrate traffic flows submitted by Harris
Exhibit No. 87	Drawings of crack in the wall submitted by Harris
Exhibit No. 88	Photographs (2 pages) of crack in the wall submitted by Harris
Exhibit No. 89	Barbara Wright deposition
Exhibit No. 90	Interlocal agreement between King County and King County Library System
Exhibit No. 91	Court of Appeals Mandate
Exhibit No. 92	Reissuance of the Determination of Nonsignificance for the Richmond Beach Library
Exhibit No. 93	Portion of letter dated April 26, 1996, from Perkins Coie to Hearing Examiner
Exhibit No. 94	Order on Preliminary Issues and Order Continuing Pre-hearing Conference dated December 24, 1996
Exhibit No. 95	Order on Preliminary Motions and Pre-hearing Order dated January 23, 1996 (<i>sic</i>), executed January 23, 1997
Exhibit No. 96	Order on: (1) Offer of Proof of Statements Committing to Preparation of EIS; (2) Request for Reconsideration of Ruling Dismissing "Asbestos", "Drainage Wetlands" and "threats to Call Police" Issues, and (3) Requests Concerning Scheduling
Exhibit No. 97	Letter dated February 18, 1992, from Robert I. Stier, King County Prosecuting Attorneys Office, to Tim Hill, King County Executive
Exhibit No. 98	Letter dated February 27, 1992, from Tim Hill, to William Gates and William H. Ptacek of King County Rural Library District
Exhibit No. 99	Photographs (2 pages) taken by robertson in 1991 of existing concrete east retaining wall
Exhibit No. 100	Photograph of east wall taken by Robertson in 1986
Exhibit No. 101	Map showing views and potential views from four residences prepared and submitted by Robertson
Exhibit No. 102	Model (with photographs) prepared by robertson showing views from various points
Exhibit No. 103	Photographs (3 pages) submitted by Griffin of retaining wall (197th and 21st intersection)
Exhibit No. 104	Report prepared by Garry Horvitz
Exhibit No. 105	Photograph of north retaining wall
Exhibit No. 106	King County Parks and Trails Atlas - Map 1
Exhibit No. 107	King County Parks and Trails Atlas - Map 5
Exhibit Nol 108	Fig 2, Share Analysis: Proportion of Population in Relation to Proportion of Local Park Acres

The following exhibits were offered and entered into the hearing record February 12, 1997:

- Exhibit No. 109 Photographs taken on Memorial Day weekend 1996 by Gioiosa
- Exhibit No. 110 Photographs taken by Ann Schulz May 25, 1996, through June 2, 1996
- Exhibit No. 111 Letter dated January 22, 1997, from Ann Schulz to Bud Parker, King County Parks Capital Program, with attached response
- Exhibit No. 112 Packet of letters between Ann Schulz and various Library and Parks staff
- Exhibit No. 113 Hard copy of E-mail from Ann Schulz to Luanne Coachman dated December 10, 1996. **Not admitted**
- Exhibit No. 114 Richmond Little League (76ers) schedule for 1996 (T-ball)
- Exhibit No. 115 packet of T-ball scheduling documents submitted by Alkire

The following exhibits were offered and entered into the hearing record February 24, 1997:

- Exhibit No. 116 Letter dated May 24, 1996, from John Alkire to Marilyn Cox
- Exhibit No. 117 Norman Davis appeal letter dated November 24, 1996
- Exhibit No. 118 Excerpt from Robert Ediger August 18, 1994, deposition
- Exhibit No. 119 Excerpt from Richard Gruger August 18, 1994, deposition
- Exhibit No. 120 1993 Lease agreement with Richmond Beach Center Park
- Exhibit No. 121 Letter dated November 12, 1991, from Gregory Kipp to Bill Ptacek
- Exhibit No. 122 Letter dated April 23, 1991, from Sherry and Jeffrey Hill to Tim Hill and Lois North
- Exhibit No. 123 Letter dated December 3, 1991, from Douglas Blair to Sherry Hill
- Exhibit No. 124 Letter dated September 24, 1991, from Sherry Hill, et al to Ray Johnston, et al
- Exhibit No. 125 Memo dated November 27, 1991, from Friends of Richmond Beach Center Park to Ray Johnston, et al
- Exhibit No. 126 Page one of letter dated December 13, 1991, from Parks, Planning and Resources Department to Sherry Hill, et al **Not admitted**
- Exhibit No. 127 King County Library System comparables for Parking and Site Plans
- Exhibit No. 128 Memo dated July 8, 1991, from Kay Johnson to Sherry Hill **Not admitted**

The following exhibits were offered and entered into the hearing record February 25, 1997:

- Exhibit No. 129 Site plan and overlay
- Exhibit No. 130 Letter dated February 19, 1997, from People for a Library in the Park to Examiner
- Exhibit No. 131 Letter dated February 24, 1997, from Barbara Heavey to Examiner regarding Objection to Deposition of Barbara Wright
- Exhibit No. 132 Letter dated January 22, 1997, from Lorna Soules (Hillwood Soccer) to Bill Griffin

The following exhibits were offered and entered into the hearing record February 26, 1997:

- Exhibit No. 133 CPACI - Demographics of Richmond Beach, Hillwood, Richmond Highlands and Innis Arden
- Exhibit No. 134 Map of Shoreline Existing Park, Recreation and Open Space Areas
- Exhibit No. 135 Richmond Beach Acreage Calculation
- Exhibit No. 136 Chart with results of Capacity Analysis for three draft land use options
- Exhibit No. 137 Sheet with three photographs submitted by Griffin - showing views from cedar

- tree at rear entrance
- Exhibit No. 138 Documents from Richmond Beach Community Council archives
- Exhibit No. 139 Five site plan drawings of area between approximately 1970 and 1996 showing various proposals
- Exhibit No. 140 Richmond Beach June-August 1996 activity schedule
- Exhibit No. 141 Video tape submitted by Griffin (admitted without narrative)
- Exhibit No. 142 Sheet with two black and white photographs submitted by Griffin
- Exhibit No. 143 Letter dated october 11, 1985, from William Griffin to Richmond Beach Library Board Association
- Exhibit No. 144
 - A packet of photographs including one of "grandfather and grandson"
 - B Packet of photographs commencing with one of section of east wall
 - C Packet of photographs commencing with volleyball game at base of mound
- Exhibit No. 145 Photographs (27 pages) submitted by Sherry Hill
- Exhibit No. 146 12 Photographs submitted by Sherry Hill entitled "Richmond Beach Center Park T-Ball Season 1992"

JNOC:daz

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